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RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND ALL FORMS OF DISCRIMINATION

Written statement*/ submitted by the Asian Legal Resource Centre,
a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 December 2000]

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

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ENG

Discrimination against new immigrants from Mainland China in Hong Kong SAR

1. Every year there about 54,000 new immigrants from Mainland China arrive in Hong Kong, representing nearly one percent of its total population. The Hong Kong Special Administrative Region (HKSAR) Government has not yet introduced any new population or immigrant policy to guide this flow. Neither is there any social or economic policy to address the needs of these newcomers. The lack of affirmative action towards these new arrivals not only hinders their equal participation, but also contributes to the building of social tension in the community.

2. New immigrants have been made the scapegoats of incompetent government actions designed to improve the living standard of poor people during times of economic recession. They have been blamed for increasing the taxpayers' burden and competing for social resources with locals. Negative public opinion has become an excuse for the government to neglect the needs of new immigrants. Most new immigrants are women and children who come to Hong Kong for family reunions. The main source of their problems is unfair and discriminative social policies:

   a. Housing Policy: Hong Kong housing rentals are the third most expensive in the world. New immigrants are desperately in need of subsidised housing. They suffer great financial hardships and can only afford to live in old and dilapidated private tenements, usually sharing a unit with 8 to 10 other families or with dozens of other dwellers in a cage-home. These immigrant families can only pin their hopes for improved living conditions on public housing. However, the HKSAR Government applies a residence rule when allocating public housing that discriminates against new immigrant families. This rule stipulates that more than half of a household must have resided in Hong Kong for at least seven years before public housing will be allocated to them. As most new immigrant families cannot meet with this criterion, they have to wait for years in order to improve their living conditions.

   b. Education Policy: Despite a majority of new immigrants from Mainland China being of school-age, the government has not developed a comprehensive policy to help them to integrate into the Hong Kong education system and society. Many have difficulties in finding a place in schools and in adjusting to the new environment. Although education is supposed to be free and compulsory for every one in Hong Kong aged between 6 and 15, many immigrant children have been denied entry to local schools due to inadequate arrangements of the Education Department and discriminatory attitudes of the schools.

      For those above 15, the Education Department even refuses to provide any assistance in securing a school place. It only recommends young immigrants above 15 study at evening schools or take adult courses, although most of them are very keen to continue their education in the regular secondary schools. Many of them can only find placements in private schools or simply give up studies.

This is likely to create a self-fulfilling prophecy that new immigrants are of a lower education standard and cannot integrate into the society. But in fact this is an outcome of deficient social policies.

c. Social Welfare Policy: As Hong Kong's economy continues to be gloomy, many new immigrant families encounter economic difficulties, but are not entitled to apply for public assistance. As with housing and education policies, the newcomers are denied equal access to social security. To be eligible for public assistance, the applicant must have resided in Hong Kong for over a year. The policy keeps the needy new immigrants distant from the provision of social welfare and makes life difficult for elderly new arrivals and their families.

3. The HKSAR Government must take affirmative measures to remove these discriminatory treatments against new immigrants from Mainland China within their polices on education, housing, and social welfare.

4. The second major area of concern is the denial of the right of abode to Mainland-born children of Hong Kong permanent residents. Articles 24(2) and (3) of the Basic Law stipulate that Chinese citizens who have ordinarily resided in Hong Kong for a continuous period of not less than seven years before or after the establishment of the HKSAR, and their children of Chinese nationality born outside Hong Kong, shall all be permanent residents. However, the HKSAR Government has deprived this right of abode for the Mainland-born children of Hong Kong permanent residents. At the change of sovereignty, the first few pieces of legislation passed by the Provisional Legislature of the HKSAR amended the Immigration Ordinance to make people residing in Mainland China a restricted category and the exercise of their rights a matter subject to control by the administration. The Immigration (Amendment) (No. 3) Ordinance requires that Mainland-born children who claim the right of abode must attach a valid Certificate of Entitlement to a one-way permit before they can settle in Hong Kong. However the Mainland authorities set a quota of 150 one-way permit entries per day. In other words, without getting one-way permits under this restrictive immigration scheme, these children cannot attain their right of abode in Hong Kong.

5. This newly enacted legislation clearly discriminates against the Mainland-born children of Hong Kong permanent residents. There is no quota limit for the children of Hong Kong permanent residents who are born outside Hong Kong and Mainland China. These children can enter Hong Kong using travel documents or passports issued by the country where the children are born. They are allowed to apply for the Certificate of Entitlement at the Hong Kong Immigration Department directly, either in Hong Kong or by mail, and can remain in Hong Kong while the Immigration Department verifies their application.

6. A series of litigation cases challenged the legality of these amendments. On January 29, 1999, the Court of Final Appeal (CFA) ruled that the amended ordinance requiring the Certificate of Entitlement to be attached to the one-way permit is unconstitutional and therefore null and void. However, the HKSAR Government

declared that the CFA judgment would lead to insoluble problems arising from a mass influx of immigrants from the Mainland. Instead of respecting and implementing the CFA's judgment, the HKSAR government, through Chief Executive Tung Chee-hwa, applied to the Standing Committee of the National People's Congress (NPCSC) of the People's Republic of China for a reinterpretation of articles 22(4) and 24(3) of the Basic Law. On June 26, 1999, the NPCSC obligingly reinterpreted the articles and thereby overturned the CFA's judgment, effectively reinstating the requirement that the Certificate of Entitlement be linked to the one-way permit and thus reinforcing discrimination against the Mainland-born children of Hong Kong permanent residents.

7. The NPCSC's decision to overturn the CFA's ruling has also jeopardised the independence of Hong Kong's judiciary. The HKSAR Government has refused to undertake not to seek future reinterpretations from the NPCSC as it did in this case. The Submission of the Hong Kong Bar Association on the First Report of the HKSAR to the Human Rights Committee observed, "The incident shows that the Government is prepared to succumb to political pressure... to resort to political process to reverse the judgement of the Court after it had lost its case in court. It will be a sad day if our judges have to look over their shoulders each time they make a controversial decision. It will be a blow to the rule of law if judges have to take into account political considerations in making their decisions."

8. The Asian Legal Resource Centre calls upon the Commission to encourage the HKSAR Government to remove those discriminatory policies against new immigrants from Mainland China and to assure citizens that it will not call on the NPCSC for future interpretations of the Basic Law.